Decision for dispute CAC-UDRP-101233

Case number	CAC-UDRP-101233
Time of filing	2016-06-16 09:34:03
Domain names	ARCELORMILTTAL.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Contact Privacy Inc. Customer 124632448

OTHER LEGAL PROCEEDINGS

No other proceedings have been notified to the Panel.

IDENTIFICATION OF RIGHTS

The Respondent became the registrant of the disputed domain name ARCELORMILTTAL.COM on 9 June 2016 through registration by the ICANN registrar Key-Systems GmbH. The Respondent is unknown thanks to use of a privacy service that reveals only a customer number and has not responded to attempts at contact by post or via the privacy service e-mail address.

According to proof the Complainant has provided, the Complainant's name is protected by trademark (the word “ArcelorMittal” as EU trademark 0947686 for classes 6, 7, 9, 12, 19, 21, 39, 40, 41, 42 of the Nice Classification scheme) and it is registrant of the domain name ARCELORMITTAL.COM. The Complainant furthermore provided proof of use of this domain name as well as of the web presence associated with it.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is ArcelorMittal S.A., a multinational steel manufacturing corporation incorporated in Luxembourg. It is the largest steel and mining company in the world and is the market leader in steel for use in the automotive, construction,

household appliances and packaging industries with operations in more than 60 countries, together with raw materials holdings and extensive distribution networks.

The Parties' contentions are the following:

COMPLAINANT:

The Complainant refers to the construction of the disputed domain name through use of its ARCELORMITTAL.COM name with the addition of an "L" before the "TTAL" fragment, something which can be taken to be an obvious misspelling but also to bear misleading optical similarity to the ARCELORMITTAL.COM name.

The Complainant refers to decisions of previous UDRP panels which have found that slight spelling variations do not prevent a disputed domain name from being confusingly similar to the complainant's trademark:
- WIPO Case No. D2004-0296 Costco Wholesale Corporation v. Yong Li (<coscto.com>);
- WIPO Case No. D2015-0451 Clarins v. "-", Unknown Registrant" / Registration Private, Domains By Proxy, LLC (<calrins.com>);
- WIPO Case No. D2011-1658 Alstom v. Telecom Tech Corp./Private Registration (<asltom.com>).

Similarly, the Complainant cites earlier UDRP decisions that have held that the lack of use of a domain name indicates absence of legitimate interests by the Respondent:
- NAF no. FA 933276 George Weston Bakeries Inc. v. McBroom;
- WIPO case No. D2000-1164, Boeing Co. v. Bressi.

As to bad faith registration and/or use, the Complainant referred to NAF case no. FA 877979, Microsoft Corp. v. Domain Registration Philippines for a finding of bad faith registration and use in regard to the <microssoft.com> domain name, as a deliberate misspelling of the MICROSOFT mark. In addition, the Complainant cited decisions that have held that incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use:
- WIPO - D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO - D2000-0400 - CBS Broadcasting, Inc. v. Dennis Toeppen.

PARTIES CONTENTIONS

RESPONDENT:

The Respondent did not enter a Response in this proceeding or make any submission during it. The Complainant, by contrast, provided evidence that no website has been associated with the disputed domain name, while the CAC's attempts to contact the Respondent via the domain's postmaster e-mail address failed, indicating that it may not have been activated.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel observes that in this case the Complainant, the ADR Provider and the Panel were all dealing with an anonymous Respondent.

This is contrary to the terms of the registrar's registration agreement with the Respondent, which implement the requirements of ICANN's registrar agreement. The Panel considers that, while there may be reasons for a registrant's identity not to be published generally, in the circumstances of domain name dispute resolution the registrar can be expected to take steps to obtain identifying data, at the request of the ADR Provider, and not simply to confirm self-evidently incomplete data to the ADR Provider.

The Panel, on the other hand, does recognize that in many cases further inquiries on the registrar's part will lead to no new information and that such inquiries should not unduly prolong the ADR proceedings. It also notes that panels in previous cases have generally accepted that a complainant or provider which has duly sent a UDRP case communication to the WHOIS-listed registrant of record for a disputed domain name will (in the absence of better information) have discharged its formal communication responsibility under the Rules.

While not viewing this practice as substantiating a hard-and-fast rule, the Panel determines in the present case that, having regard to its powers under Paragraph 10 (a), (b) and (c) and to Paragraph 15 (a) of the Rules, the prejudice to the Complainant of prolonging proceedings outweighs the benefit that may be obtained from attempting to unmask the registrant. This determination in no way endorses registrant privacy masking; nor does it affect the contractual responsibility of a registrar to ICANN to apply its own obligations and those of a registrant as regards provision of identification data.

Therefore, the Panel finds that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

This is as clear a case of typosquatting as one can imagine. There can be no question that the disputed name was devised to attract traffic from the Complainant's ARCELORMITTAL.COM website through use of a misspelling that maintained close optical similarity to the real name. Not only does this conduct demonstrate lack of legitimate interest, but the concealment of the Respondent's identity behind a privacy service compounds it. This is because, even if a legitimate interest were somehow arguable, the Respondent's anonymity has ensured that it cannot be discovered. The Respondent has, of course, failed here to submit any Response after fruitless attempts at contact.

The same conduct evidences the Respondent's bad faith. Though apparently not yet activated, the Respondent's registration of the disputed domain name made it a passive asset for potential future exploitation in violation of the Complainant's protected rights. Web users in actuality seeking the Complainant's target name would then land solely by mistake at the disputed domain name. It is difficult to conceive how the presumption of bad faith raised by such a stratagem could be rebutted, but, in the absence of any Response or other circumstances shown by the evidence available to it, the Panel must find bad faith to have been shown conclusively in this case.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **ARCELORMILTTAL.COM**: Transferred

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2016-07-25

Publish the Decision